

UTILITY DIVISION 38.5.8002

Sub-Chapter 80

Electric Utility Restructuring

Electricity Supplier Licensing and Reporting

38.5.8001 GENERAL REQUIREMENT TO OBTAIN LICENSE TO SUPPLY ELECTRICITY (1) All electricity suppliers, including unregulated public utility affiliates, for-profit affiliates of cooperative utilities that provide electricity supply service using public utility distribution facilities, market aggregators, marketers and brokers must file an application and receive a license from the public service commission before selling or offering to sell electricity to consumers in the state of Montana. An application must include a certificate of service showing that the application was sent to each distribution services provider on a list of providers created and maintained by the commission. The commission will issue a license within 30 days of receipt of a complete application. The commission may reject an application deemed incomplete or inadequate, and issue an order specifying the deficiencies of the application and, if practical, identify alternative ways to overcome deficiencies.

(2) An electric cooperative supplying electricity to its members is not required to obtain a license from the commission, whether or not the electric cooperative has opened its local distribution system to other suppliers. A for-profit affiliate of an electric cooperative must obtain a license from the commission before supplying electricity to the parent cooperative=s members. (History: Sec. 69-8-403, MCA; IMP, Sec. 69-8-404, MCA; NEW, 1998 MAR p. 1929, Eff. 7/17/98.)

38.5.8002 CONTENTS OF APPLICATION FOR LICENSE TO SUPPLY ELECTRICITY (1) Except as provided for in (2) and (3), an applicant shall include the following information in an application for a license to supply electricity:

(a) complete business name of the applicant, and all names that may be used when marketing electricity supply services to consumers;

(b) complete street and mailing address of the applicant=s principal office;

(c) if intending to serve or solicit residential or commercial (under 300 kW) consumers, the address and direct,

toll-free phone number of the department or office that should be contacted by consumers regarding supply;

(d) the name of a regulatory contact who should be contacted regarding the application, and the address, direct phone number, fax number and e-mail address of that person;

(e) the name and business address of all applicant=s officers and directors, partners, or other similar officials, and a statement that neither the applicant, nor any of its officers and directors, partners or other similar officials are currently in violation of, and within the past three years have not violated, any state or federal consumer protection laws or rules;

(f) descriptions of the activities and purposes of applicant, including:

(i) customer segments which applicant intends to serve or solicit (e.g., residential, small business (under 20 kW), commercial, industrial); and

(ii) a list of public utility and cooperative utility electric distribution service territories in which applicant intends to provide service or solicit customers;

(g) a list of affiliates, a corporate organization diagram, a description of each affiliate=s activities and purposes, a description of any distribution facilities owned or operated by an affiliate in the state of Montana and the status of open and nondiscriminatory access to those facilities for all electricity suppliers;

(h) the state(s) under which applicant is organized, the form(s) of organization (corporation, partnership, association, firm, individual, etc.), the date of organization and duration, and a list of states where applicant is currently licensed or registered to provide electricity supply;

(i) an agreement that, on commission request, the applicant will demonstrate that it has obtained generation capacity, power purchases and transmission rights sufficient to deliver subscribed retail electricity services with adequate reserves;

(j) an agreement to comply with reliability criteria established by the North American electric reliability council and the western systems coordinating council and mid-continent area power pool, as applicable;

(k) prior to executing contracts with residential and commercial (under 300 kW) customers, a demonstration of applicant's financial integrity through one of the following:

(i) a long term bond (or other senior debt) rating of BBB-, or equivalent debt or credit rating, obtained in one of the following ways:

(A) the rating must be determined by Standard and Poors, Dunn and Bradstreet Information Services, or another recognized U.S. or Canadian debt or credit rating service, or

(B) the applicant may, at its own expense, obtain a private rating from a recognized debt rating service, or request that an independent accountant or financial advisor, mutually acceptable to the commission and the applicant, prepare an equivalent evaluation based on the financial rating methodology, criteria, and ratios for the industry as published by the above rating agencies from time to time;

(ii) two years of audited financial statements; or

(iii) a \$100,000 performance bond;

(l) most recent annual report to shareholders; and

(m) copies of standard forms or contracts used to provide service to residential and commercial (under 300 kW) customers.

(2) An electricity supply broker not taking title to electricity supplies but acting as an agent or intermediary in the sale or purchase of electricity shall include the following information in an application to supply electricity:

(a) complete name of the applicant, and all names that may be used when marketing or brokering;

(b) complete street and mailing address of the applicant's principal office;

(c) the name of the person to contact regarding the application, and the address, direct phone number, fax number and e-mail address of that person;

(d) descriptions of the activities and purposes of applicant, including:

(i) customer segments which applicant intends to serve or solicit (e.g., residential, small business (under 20 kW), commercial, industrial); and

(ii) a list of public utility and cooperative utility electric distribution service territories in which applicant intends to provide service or solicit customers;

(e) a list of affiliates, a corporate organization diagram, a description of each affiliate=s activities and purposes and any distribution facilities owned or operated by an affiliate in the state of Montana and the status of open and nondiscriminatory access to those facilities for all electricity suppliers; and

(f) a description of all ownership interests in any supplier operations.

(3) A broker or marketer obtaining a license pursuant to (2) of this rule may not sell retail electricity supplies in the state of Montana, be an aggregator or engage in market aggregation by taking title to electricity for sale to retail end-use customers unless it has submitted the information listed in (1) of this rule and the commission has determined the information to be complete and adequate. (History: Sec. 69-8-403, MCA; IMP, Sec. 69-8-404, MCA; NEW, 1998 MAR 1929, Eff. 7/17/98.)

38.5.8003 ELECTRONIC REGISTRATION (1) Licensed electricity suppliers must complete and maintain an electronic registration form on the commission=s internet web site as a condition of remaining licensed. Licensed suppliers must provide the following information electronically:

(a) the complete business name of the applicant, and all names that may be used when marketing electricity supply or brokering services to consumers;

(b) the complete street and mailing address of the applicant=s principal office;

(c) the name, address, direct phone number, fax number and e-mail address of a regulatory contact person;

(d) a customer service telephone number, which must be toll-free if the supplier serves or solicits residential and commercial (under 300 kW) customers;

(e) customer segments served (e.g., residential, small business (under 20 kW), commercial, industrial);

(f) if serving or soliciting residential and small business (under 20 kW) customers, a description of, and prices for, the standard service offer; and

(g) public utility and cooperative utility electric distribution service territories where products are offered to customers under 20 kW. (History: Sec. 69-8-403, MCA; IMP, Sec. 69-8-404, MCA; NEW, 1998 MAR p. 1929, Eff. 7/17/98.)

38.5.8004 ANNUAL REPORTS (1) On an annual basis on or before August 1, or more frequently if the commission so orders, licensed electricity suppliers must update the information required under ARM 38.5.8002 and file reports containing the following information for the previous 12 month period ending June 30:

(a) a descriptive list of products and services offered to residential and commercial (under 300 kW) customers (e.g., variable/formula-based electricity supply, fixed price electricity supply, environmentally oriented or "green" electricity supply, demand-side energy management products and services, metering services, billing services, other customer account services);

(b) the aggregate number of Montana residential subscribers, aggregate sales in units and revenues, and number and average term of contracts signed with Montana residential customers in the reporting period;

(c) the number of times distribution companies had to provide emergency supply service for the reporting supplier; and

(d) the aggregate number of Montana commercial (under 300 kW) subscribers, aggregate sales in units and revenues and average term of contracts signed with Montana commercial customers in the reporting period.

(2) A supplier may request a protective order for information provided in (1)(a), (b) and (d). (History: Sec. 69-8-403, MCA; IMP, Sec. 69-8-404, MCA; NEW, 1998 MAR p. 1929, Eff. 7/17/98.)

38.5.8005 STANDARD SERVICE OFFER (1) Licensed suppliers serving residential and small business (under 20 kW) customers must maintain a standard service offer characterized by:

(a) service contracts no longer than three months, except as provided in (3);

(b) fixed prices per kilowatt-hour of consumption and per kW demand, as applicable, subject to (2) through (4).

(2) Standard service offer prices may vary by season and for consumption blocks of at least 400 kilowatt-hours.

(3) The standard service offer may include a budget/fixed monthly bill option, in which case the contract term may extend for no more than 12 months. The historical average consumption used to compute the customer=s bill amount must be prominently identified and explained on the monthly bill.

(4) Licensed suppliers may modify the price(s) and structure of their standard service offers, within the framework set forth in this rule, at any time by updating the supplier=s electronic registration information.

(5) Licensed suppliers serving residential and small business (under 20 kW) customers may offer other services to these customer segments, in addition to the standard service offer. (History: Sec. 69-8-403, MCA; IMP, Sec. 69-8-404, MCA; NEW, 1998 MAR p. 1929, Eff. 7/17/98.)

38.5.8006 SERVICE CONTRACT (1) All rates, terms and conditions for supply service must be provided to a retail consumer in a service contract, written in plain language. The service contract must be signed by the consumer and returned to the supplier before any service is provided. For residential and commercial (under 300 kW) electricity consumers, the front page of a service contract shall prominently and clearly disclose:

(a) the term of the contract; and

(b) the effective price for electricity supply service, in cents per kilowatt-hour for various levels of consumption typical for the consumer=s customer segment;

(c) whether the price is fixed or variable and, if variable, a general description of the potential range and possible causes of price variations and the pricing formula or index, as applicable;

(d) the amount of any late payment penalties and an explanation of when they apply;

(e) an explanation of conditions under which the supplier will terminate the supply agreement; and

(f) the toll-free telephone number.

(2) All customer or miscellaneous surcharges must be prominently identified and explained in the service contract.

(3) No supplier, distribution service provider, transmission service provider, system services provider, energy service provider, metering service provider, billing service provider, or other company or individual involved in the sale or delivery of electricity may disclose individual consumer information to others without prior written consent from the consumer except as provided by commission rule or order.

(4) Residential and commercial (under 300 kW) consumers shall have a 3-day grace period from the time of entering into a service contract to notify the supplier of termination of the contract without incurring liability for supply services not consumed or taken under the contract.

(5) A consumer with a load under 300 kW may terminate a service contract without incurring liability for supply services not consumed or taken under the contract by notifying the supplier that the consumer is relocating outside the geographic area served by the supplier, or is moving to a location where the consumer is not responsible for payment of the service consumed.

(6) A supplier must notify its customers, the commission and the distribution companies in writing at least 30 days prior to ceasing business under an existing license or terminating service to an entire customer segment.

(7) The contract must clearly explain that distribution charges from the customer's local distribution utility are not part of the contract. (History: Sec. 69-8-403, MCA; IMP, Secs. 69-8-404, 69-8-408, 69-8-409 and 69-8-410, MCA; NEW, 1998 MAR p. 1929, Eff. 7/17/98.)